IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5257 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEVJI LAKHA PRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5257 of 2004

MR NV ANJARIA for Petitioner No. 1

MR SN SHELAT, A.G. with MS MAITHILI MEHTA, A.G.P for Respondents Nos. 1,3

MR NIKHILESH J SHAH for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 05/08/2004

ORAL JUDGEMENT

1. Heard learned advocate Shri Nilay Anjaria for the petitioner, learned advocate Shri S.N. Shelat with learned A.G.P. Ms Maithili Mehta for respondents nos. 1 and 3 and learned advocate Shri N.J. Shah for respondent no. 2.

2. By an order dated 2nd May, 2003 passed in Special Civil Application No. 5943/2003, this Court had directed respondent no. 3 to consider the representation dated 16th April, 2003 made by the petitioner. The said direction had to be given for the reason that no decision had been taken by respondent no. 3 on the said representation.

3. Respondent no. 3 has placed on record a copy of the order dated 12th May, 2004, which has been passed in pursuance of further direction given by this Court in this petition.

4. Upon perusal of the papers and the order dated 12th May, 2004 passed by respondent no. 3, an affidavit-in reply filed by respondent no. 2, it appears that the preliminary scheme, with which this Court was concerned, had been given sanction by the State of Gujarat under the provisions of Section 65 of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as "the Act") on 21st January, 2003.

5. Looking to the said fact, it was not open to respondent no. 3 to take any action in pursuance of the representation made by the petitioner, because upon the scheme being finally sanctioned under the provisions of Section 65 of the Act, respondent no. 3 cannot take any action unless a variation is directed by the State of Gujarat.

6. In view of the aforestated circumstances, learned advocate Shri Anjaria has submitted that the petitioner would like to make a representation to the State of Gujarat through respondent no. 2 under the provisions of the Act so that case for variation can be considered. If such an application is forwarded to respondent no. 2, I am sure that respondent no. 2 shall look into it and alongwith its report, it shall forward the same to the State of Gujarat for further action. The petitioner shall make a representation on or before 13th August, 2004 to respondent no. 2 and respondent no. 2 shall forward the representation alongwith its remarks to the State of Gujarat as soon as possible.

7. In view of the above order, the petition stands disposed of. Rule is made absolute to the above extent with no order as to costs.

(A.R. DAVE, J.)

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